IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1705 OF 1983
With
FIRST APPEAL NO. 1706 OF 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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BHANIBEN W/O NANJIBHAI LAXMANBHAI - Appellant(s)
Versus
CHANDULAL MOHANLAL SONI & ORS. - Respondent(s)

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Appearance :
Shri P.V. Hathi for Appellant(s).
Shri J.T. Trivedi for Respondent(s) : 1.
None for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/05/2007

COMMON ORAL JUDGMENT

The appellant, Bhaniben, wife of Nanjibhai, has filed First Appeal No.1705 of 1983 for enhancement in relation to her Motor

Accident Claim Petition No.110 of 1981, seeking enhancement to the extent of Rs.20,000/-, while Nanjibhai and Bhaniben have filed First Appeal No.1706 of 1983 seeking enhancement in the award amount to the extent of Rs.30,000/-. The parties are aggrieved by the said judgement delivered on 3rd April, 1982 by the learned Member, Motor Accident Claims Tribunal, Bhavnagar.

2. The short facts necessary for disposal of the present appeals are that Nanjibhai - son of Laxmanbhai, Bhaniben - wife of Nanjibhai and their minor daughter, Nathibai, aged about 14 years, were returning from their labour work in a tractor; a public carrier bearing Registration No.GTS 5914, coming from the opposite direction, collided with the tractor, which resulted into injuries to Nanjibhai and Bhaniben and led to the death of Nathiben.

3. Nanjibhai filed Claim Petition No.33 of 1981 claiming a sum of Rs.9,999/- as compensation for the injuries suffered by him, Bhaniben filed Claim Petition No.110 of 1981 claiming a sum of Rs.35,000/- as compensation for the injuries suffered, her lodgement in the hospital, pain, shock and sufferings, and loss of one tooth and Claim Petition No.111 of 1981 was filed by Nanjibhai and Bhaniben, parents of Nathiben, who lost her life in the said accident, claiming a sum of Rs.70,000/-. The learned Member, Motor Accident Claims Tribunal, Bhavnagar awarded a sum of Rs.1,900/- to Nanjibhai, Rs.2,325/- to Bhaniben and a sum of Rs.9,200/- against the death of Nathiben. In all the three matters, separate appeals were filed. First Appeal No.1704 of 1988 at the instance of Nanjibhai came to be dismissed by this Court, while other two appeals were admitted for hearing the parties.

4. Shri P.V. Hathi, learned Counsel for the appellants in each of

the matters, submitted that the learned Court below took a hyper technical approach and started weighing the losses in the golden scales and erred in awarding a paltry sum of Rs.2,325/- despite holding that the claimant, who lost her tooth, had to stay in the hospital for six days and also had to suffer pain, shock and suffering. He submits that in absence of any evidence contrary to the statement of the claimant that she could not go for the labour work, the Court below could not hold that she is still able to work and earn. In the matter relating to death of the daughter, it is submitted that in the matter of ***New India Assurance Co. Ltd. vs. Satender & Ors.***, [***2007 ACJ 160***], in the case of death of a minor of nine years, the Apex Court has awarded a sum of Rs.1,80,000/-. Therefore, this Court should award a sum of Rs.30,000/-, as claimed in the appeal.

5. Shri J. T. Trivedi, learned Counsel for the respondent in First Appeal No.1705 of 1995, submits that the learned Court below was justified in assessing the loss and did not err in awarding a sum of Rs.2,325/-.

6. I have heard the parties at length.

7. So far as the claim lodged by Bhaniben in relation to her injuries, loss of earning, loss of earning, pain shock and suffering and loss of tooth is concerned, I must immediately hold that the learned Court below was not justified in assessing the loss in the golden scales by observing that the claimant, being a married woman, her future prospects will not be adversely affected. Present is not a case of disfigurement, but, present is a case of loss of enjoyment of life. When a person suffers fracture of a tooth, its pain is unbearable and if such person has to remain in the hospital for a period of six days for repair of

the injuries, then, one must not have a platonic approach in deciding the matter in the golden scales. If somebody could not attend to the work for a period of twelve days, then, for such twelve days, such person has to undergo pain and suffering.

8. Taking into consideration the totality of the circumstances, I am of the opinion that the claimant must be entitled to a sum of Rs.5,000/- in addition to what has already been awarded to her. The respondents, owner, driver and the insurance company, are jointly held liable to pay the additional amount of Rs.5,000/- to the claimant with interest at the rate of 9% per annum from the date of the claim petition till recovery. It is, however, made clear that any amount earlier paid would not be adjusted towards the interest, which may accrue on this additional amount.

9. In the matter of ***New India Assurance Company*** (*supra*), the Supreme Court has observed as under:

> *"Determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases where parents are claimants, relevant factor would be age of parents.*
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> *In the case of death of an infant, there may have been no actual pecuniary benefit derived by the parents during the*

child's lifetime. But this will not necessarily bar the parent's claim and prospective loss will find a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived.

In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation."

In the present case, undisputedly, the future prospects of the deceased could only be of labour. It is not in dispute before me that she was working as a labour and the claimants have not said that she was studying in some school and was bound to settle for better benefits in the life. The Court below, in the opinion of this Court, was little hyper technical in assessing the income of the deceased and in making the deductions as personal expenses of the deceased.

10. Taking into consideration the loss of company, loss of expectancy of life and loss of earning for the future, I am of the opinion that under these heads, the claimants must get a sum of Rs.15,000/- in addition to what has already been awarded by the learned Court below.

The owner, the driver and the insurance company would be jointly and severally liable to pay the amount with interest @ 9% per annum on the additional amount from the date of the claim petition till recovery of the said amount.

11. Both the appeals are allowed. There shall be no order as to costs.

[R.S.Garg, J.]

*kamlesh**